

ESTATE OF HATTIE JONES ASEPERMY

IBIA 86-1

Decided July 28, 1986

Appeal from an order denying rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate Nos. IP OK 249 P 85, IP OK 53 P 85.

Affirmed.

1. Indian Probate: Claim Against Estate: Tort of Decedent

A claim sounding in tort against a deceased Indian's trust estate is properly rejected if it has not been reduced to judgment in a court of competent jurisdiction.

APPEARANCES: Dennis G. Chappabitty, Esq., Lawton, Oklahoma, for appellant; Houston Bus Hill, Esq., Oklahoma City, Oklahoma, for appellees. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE VOGT

On October 10, 1985, the Board of Indian Appeals (Board) received a notice of appeal from Ruth Asepermy Myers (appellant). Appellant sought review of an order denying rehearing issued in the estate of Hattie Jones Asepermy (decedent) by Administrative Law Judge Sam E. Taylor on September 3, 1985. The order denying rehearing let stand a June 14, 1985, order approving decedent's will. For the reasons discussed below, the Board affirms that decision.

Background

Decedent, Kiowa Allottee 3324, was born on August 16, 1907, and died in Lawton, Oklahoma, on November 20, 1984. Because she died possessed of certain Indian trust property within the former Kiowa, Comanche and Apache Indian Reservation in Oklahoma, a hearing to probate that trust estate was held before Judge Taylor on May 14, 1985.

Decedent's last will and testament, dated May 22, 1981, with attached affidavit to accompany Indian will, was introduced at the hearing. Testimony showed that decedent was survived by her husband, George Asepermy, Sr., Comanche 3432, and by nine sons and daughters, Fern Asepermy Tosee, Ruth Asepermy Myers (appellant), George Asepermy, Jr., Gloria Asepermy Caudillo, Theresa Asepermy Pilas, Yvonne Asepermy Evans, Roy Allen Asepermy, Frankie L. Asepermy, and Tomah Ella Asepermy. Decedent's will left \$1 to appellant.

Appellant submitted a claim against decedent's estate for \$30,000. Appellant's claim, as set forth in an April 8, 1985, letter to Judge Taylor, stated:

We are filing a monetary claim against the estate of Hattie Jones Asepermy because of the fact that she and George Asepermy failed to keep a simple family agreement with us on his allotment of 120 acres in Tillman County. The land was reserved by him through the Area Office which takes the land out of lease contention so that we could go down to Tillman County and put a house on the place and improve the land. We improved the land but we did not get to build a house on the place.

After spending our money and two years of improving his land they both decided we were trespassing and wanted to lease the place to someone else so that they wouldn't have to pay us. We are charging them with conspiracy and fraud.

Judge Taylor noted that the property at issue was held in Indian trust status for George Asepermy, Sr., and that decedent had no interest in it. He further noted that one law suit had been filed and dismissed concerning the matter and a second suit was pending in Tillman County District Court. Judge Taylor stated that a claim against decedent's estate would be proper only if appellant had a judgment based on her lawsuit against decedent.

On June 14, 1985, Judge Taylor issued an order approving decedent's will. Concerning appellant's claim, the Judge stated at page 3 of his order:

The basis of said claim is for expenses claimant incurred pursuant to a purported agreement between she and her mother and father relative to property of her father. The decedent did not have any interest in said property. Accordingly, although the decedent may have participated in making the agreement, it actually is an agreement between the claimant and her father. Accordingly, said claim is not approved.

On August 13, 1985, appellant requested rehearing of the disallowance of her claim on the grounds "that she was not given a chance to present evidence at the hearing on May 14, 1985, and did not receive notice soon enough for her to prepare her case and as a result did not arrive at the hearing until after the Court had recessed." By order dated September 3, 1985, Judge Taylor denied rehearing. The order states at page 1:

Claimant has not alleged what evidence she seeks to present, and in that respect her notice is not in compliance with the regulations relative to petitions for rehearing. Furthermore, as previously stated to claimant, insofar as her mother being held liable for having influenced her father to cancel some agreement, she, the claimant, must first secure a judgment against her mother from a court of proper jurisdiction. Inasmuch as she has never alleged nor offered to produce such judgment, her claim must be disallowed.

The Board received appellant's appeal from this decision on October 10, 1985. Both appellant and the principal heirs under decedent's will (appellees) filed briefs on appeal.

### Discussion and Conclusion

In this proceeding, appellant seeks to enforce against her mother's estate an alleged contract relating to her father's individually-owned trust property. The basis for her claim is that her mother caused her father to breach the contract. Because decedent owned no interest in the land at issue and would not, therefore, have been an actual party to the alleged contract regarding its disposition, appellant's claim amounts at most to an allegation of tortious interference with contractual rights. The general rule regarding tortious interference with contractual rights, as set forth in 86 C.J.S. Torts § 44 (1954) "is that one who maliciously, or one who wrongfully, or one who, without justification, excuse, or privilege, interferes with any contract, or causes a party to violate his contract with another, to the injury of the other party to the contract, is guilty of an actionable tort."

In Estate of Thomas Untuch (Saw-yock-til), IA-1157 (1960), the Deputy Solicitor of the Department of the Interior affirmed an order denying rehearing on a claim arising from an automobile accident involving the decedent. The appellants there had attempted unsuccessfully to bring their case in state court, after deciding against pursuing it in tribal court. They stated that they were raising their claim in the Departmental probate proceeding because no other forum was available. The Deputy Solicitor held at page 2:

Even though there may be no express prohibition against an Examiner of Inheritance [now, Administrative Law Judge (Indian Probate)] hearing a claim of this nature, it may be stated with certainty that such a proceeding was not contemplated by the regulations and there is no precedent for it. To make a finding of negligence in an automobile accident case, and to determine the amount of damages, is a function that goes far beyond the duties of an Examiner. If he could assume original jurisdiction in an automobile negligence [i.e., tort] case it would seem to follow that his office would be open to every other kind of civil action. Thus, he would be acting as a court of general jurisdiction, which he is not, rather than as the probate officer he is. The Examiner correctly refused to entertain appellants' claim because it had not been reduced to judgment.

See also Estate of Adam Red Nest, IA-1181 (1960) (the decedent was killed in the automobile accident out of which appellant's claim arose).

[1] Since these cases were decided, the Department has promulgated the regulation at 43 CFR 4.250(f), which provides that "[c]laims sounding in tort not reduced to judgment in a court of competent jurisdiction \* \* \* may be barred from consideration by an administrative law judge's interim order." Accordingly, based on case precedent and regulation, the Judge properly denied rehearing on a claim sounding in tort that had not been reduced to judgment by a court of competent jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Taylor's September 3, 1985, order denying rehearing is affirmed. 1/

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Anita Vogt  
Administrative Judge

I concur:

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Jerry Muskrat  
Administrative Judge

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1/ This decision in no way affects whatever rights appellant may have to seek redress for the alleged breach of contract against her father, who is still living.